In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1201

GEORGE WILLIAM CROCKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 25-28; R. 1-4) is not yet reported. The opinion of the district court is reported at 294 F. Supp. 776.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 1970 (R. 5). Mr. Justice White extended the time within which to file a petition for

a writ of certiorari to and including February 24, 1970, and the petition was filed on February 18, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Selective Service law is invalid on the ground that it is not a proper constitutional means for the raising of manpower for military service.

STATEMENT

After a jury trial in the United States District Court for the District of Minnesota, petitioner was found guilty on Count I of an indictment charging him with failure to comply with an order of his local board to report for and to submit to induction into the Armed Forces, in violation of 50 U.S.C. App. 462 (App. 3, 7).[1] A motion for judgment of acquittal or dismissal, for arrest of judgment, or, alternatively, for a new trial was denied (App. 8-10). On appeal the conviction was affirmed (Pet. App. 25-28; R. 1-5).

There is no dispute as to the evidence which is set forth in the opinions of both courts below (Pet. App. 20-21, 26). Petitioner, a Quaker, at first received a Form 150 questionnaire for conscientious

[1] "App." refers to appellant's printed appendix in the court of appeals, which is part of the record before this Court. Count II of the indictment, charging failure to keep the local board informed as to petitioner's current address, was dismissed on the government's motion prior to trial (App. 2, 7).

objectors, but sent it back blank to his local board. Petitioner was of the view that any cooperation with the Selective Service System is wrong and that such a system symbolizes a totalitarian state. Later communications from the local board to petitioner went unanswered, and in several instances were returned unopened. Petitioner was subsequently classified I-A, but took no appeal from his classification. He failed to appear for induction as ordered by his local board. Petitioner's only defense in the district court and in the court of appeals was that the Selective Service law (50 U.S.C. App. 451 *et seq.*) is unconstitutional.

ARGUMENT

Petitioner makes an intricate historical argument that the Selective Service law is unconstitutional on the ground that it is not a proper means to "raise and support Armies" under Article I, Section 8, Clauses 12 and 18 of the Constitution, in that it circumvents the constitutional processes for "calling forth the Militia" under Article I, Section 8, Clause 15.[2] Reduced to its essence this argument amounts to the claim that these historical materials were not squarely focused upon in the *Selective Draft Law Cases*, 245 U.S. 366, and that accordingly that decision should be reexamined and overruled. In the *Selective Draft Law Cases* the Court did, however, discuss what it deemed to

[2] Petitioner also invokes Article I, Section 8, Clauses 15 and 16; Article I, Section 10, Clause 3; and the Second Amendment (see Pet. 2-3).

be the critical historical considerations.[3] More dispositively, as this Court recently pointed out in *United States* v. *O'Brien*, 391 U.S. 367, 377:

> The constitutional power of Congress to raise and support armies and to make all laws necessary and proper to that end is broad and sweeping. *Lichter* v. *United States*, 334 U.S. 742, 755-758 (1948); *Selective Draft Law Cases*, 245 U.S. 366 (1918); see also *Ex parte Quirin*, 317 U.S. 1, 25-26 (1942). The power of Congress to classify and conscript manpower for military service is "beyond question." *Lichter* v. *United States*, *supra*, at 756; *Selective Draft Law Cases*, *supra*.[4]

There is no occasion for reconsideration of these established principles at this late date.

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[3] As that opinion points out, the compulsory draft was a normal method of raising armies in the United States at the time the Constitution was adopted; it was expressly recognized in many constitutions of the several States; and was enforced by the States for local purposes in calling out the militia and also for obtaining levies to fill up the ranks of the Continental Army. See *Selective Draft Law Cases*, *supra*, 245 U.S. at 380-381, and the government brief in that case (pp. 18-22, Nos. 656, 663, *et al.*, October Term, 1917).

[4] See also the cases cited by the court below in support of the statement that the courts have consistently and uniformly "upheld the constitutionality of conscription" (Pet. App. 27).

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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